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DEC 20 193
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No. 636

In the Supreme Court of the United States

OCTOBER TERM, 1935

JAMES WALTER CARTER, PETITIONER

v.

CARTER COAL COMPANY ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

MEMORANDUM FOR THE RESPONDENTS, GUY T. HELVERING ET AL.

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Those respondents who are officers of the Government acquiesce in the granting of the petition for a writ of certiorari to the United States Court of Appeals for the District of Columbia, even though the case has not yet been submitted to, heard, or decided by that court.

The questions presented relate to the validity of the Act of August 30, 1935, known as the Bituminous Coal Conservation Act of 1935. The decree of the Supreme Court of the District of Columbia, entered December 10, 1935, denied the injunction sought by petitioner, a stockholder and officer of

the Carter Coal Company, to restrain the Carter Coal Company and its officers from filing an acceptance of the code promulgated by the National Bituminous Coal Commission pursuant to the provisions of Sections 4 and 5 of the Act, and to restrain the Government officer defendants from taking any steps to collect the taxes imposed by Section 3 of the Act. The court upheld the constitutionality of those provisions of the Act and the code promulgated thereunder involving the fixing of prices and the regulation of unfair methods of competition. Although the court regarded the provisions with respect to labor relations as invalid, it held that this did not warrant granting the relief sought, inasmuch as those provisions were separable from the remainder of the Act.

While the respondents Guy T. Helvering et al. believe that the decree of the Supreme Court of the District of Columbia, in so far as it dismisses the bill of complaint and denies the relief prayed therein, is correct, they acquiesce in the issuance of the writ because of the importance of the questions presented. More than fifty cases have been brought in the lawer Federal courts to enjoin the enforcement of the Bituminous Coal Conservation Act of 1935, and in a number of these cases temporary injunctions have been granted. Certain taxes imposed by Section 3 of the Act become payable January 2, 1936, and their collection will be impossible in many cases due to these temporary injunctions.

The bituminous coal industry will remain uncertain as to the effect of the Act until its validity is determined by this Court. In view of these considerations, it seems clear that it is in the public interest to have an early decision by this Court of the issues raised in the petition.

Respectfully submitted.

STANLEY REED,
Solicitor General.
JOHN DICKINSON,
Assistant Attorney General.

DECEMBER 1935.

U. S. GOVERNMENT PRINTING OFFICE: 1935